

IN THE HIGH COURT OF TANZANIA

(IN THE DISTRICT REGISTRY)

AT MWANZA

MISC. CIVIL APPLICATION NO. 08 OF 2021

(From Land Appeal No. 36 of 2020 of the High Court of Tanzania at Mwanza)

GRACE WANNA APPLICANT

VERSUS

PETRO JOSEPH KITAMBO RESPONDENT

RULING

Date of the last order: 25.05.2021

Date of the Ruling: 25.05.2021

A.Z.MGEYEKWA, J

This is a ruling on a preliminary objection, taken at the instance of the respondent's Advocate, contending that the application for leave to appeal to the Court of Appeal of Tanzania is time barred. The applicant's application seeks to move this Court to exercise its discretion under section 47 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019] to grant leave to appeal to the Court of Appeal of Tanzania. The application is supported by an affidavit deposed by Grace Wanna, the applicant. The application has encountered formidable opposition from the respondent

and has demonstrated his resistance by filing a counter affidavit deposed by Petro Joseph Kitambo, the respondent and a preliminary objection as hereunder:-

- 1. That, this application is time barred contrary to section 45 (a) of the Appellate Jurisdiction Act, Cap. 141 [R.E 2019].*

When the matter was called for hearing on 25th May, 2021, the appellant enjoyed the legal service of Mr. Kelvin, learned counsel, the respondent was represented by Mr. Regan, learned counsel.

It was Mr. Kelvin, learned counsel for the appellant who kicked the ball rolling. In supporting the preliminary objections, he argued that the instant application is lodged out of time contrary to section 45 (a) of the Appellate Jurisdiction Act, Cap. 141 which requires the applicant to file his appeal within 30 days. He asserts that the 30 days start to run from the date when the judgment was delivered. The learned counsel for the applicant continued to state the application was filed on 22nd January, 2021, and the judgment was delivered on 08th December, 2021, counting the days the applicant's application is out of time. He lamented that the applicant ought to file an application for extension of time which he did not do.

On the strength of the above submission, he beckoned upon this court to strike out the application.

Responding, Mr. Regan was brief and straight to the point, he stated that the applicant filed the instant application on 22nd January, 2021 he was awaiting copies of judgment. Mr. Regan agreed that it is true that Rule 45 (a) of the Court of Appeal Rules, GN. 368 of 2009 has set 30 days as the length of time within which an application for appeal should be instituted and the 30 days lapsed but he urged this court to allow the applicant to proceed with other procedures.

In his rejoinder, Mr. Kelvin reiterated his submission in chief and insisted that the law is clear that the limitation of time is 30 days therefore the applicant was required to abide by the law taking to account that the applicant was represented by an Advocate.

Before I embark to determine this application on merit, I take judicial notice that the applicable law in this matter is the Court of Appeal Rules, 2009 as amended by the Written Laws (Miscellaneous Amendments) Act No. 08 of 2019 and not Rule 45 (a) the Appellate Jurisdiction Act, Cap. 141 [R.E 2019] cited by Mr. Kelvin, learned counsel for the respondent. The same does not exist. Since this is a point of law, I will direct myself and find out ***whether the application filed within time.***

Having heard the submissions of both parties for and against the preliminary objection, I proceeded to give my findings that the application before me is out of time. I want to make it clear that, applications for leave to the Court of Appeal is 14 days counted from the date of when the Court delivered the decision, the same governed by the provisions of Rule 45 (a), as amended by GN. No. 362 of 2017. The law which provides for the time frame to lodge an appeal to the Court of Appeal of Tanzania is 30 days from when the decision was delivered. The decision sought to be impugned was delivered on 08th December, 2020 and the instant application was filed on 22nd January, 2021. Reading Rule 69 (a) of Court of Appeal Rules, 2009 as amended by the Written Laws (Miscellaneous Amendments) Act No. 08 of 2019, it provides that:-

*" 68 (1) Any person who desires to appeal to the Court shall give notice in writing, which shall be lodged in triplicate with the High Court at the place where the decision against which it is desired to appeal was given, **within thirty days of the date of that decision and the notice of appeal shall institute the appeal.**" [Emphasis added]*

Pursuant to the above provision of the law, the appellant ought to have filed the appeal within thirty days after the date of the decision of this court which the appellant intended to challenge. Instead, the

appellant has filed his appeal after 44 days, a delay of 14 days. The records are silent whether the appellant applied for an extension of time to file his appeal out of time, the same is certainly improper before this court.

For reasons canvassed above, I find that the preliminary objection by the respondent's learned counsel is meritorious and holds a sway. I hold that the application is improper before this court. Thus, I proceed to strike out the application. Each party to shoulder his own costs.

Order accordingly.

Dated at Mwanza this date 25th May, 2021.


A.Z.MGEYEKWA

JUDGE

25.05.2021

Ruling delivered on 25th May, 2021 in the presence of Mr. Kelvin, learned counsel for the respondent, and Mr. Regan, learned counsel for the applicant.


A.Z.MGEYEKWA

JUDGE

25.05.2021

